

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

**LUPITA VILLA,
Plaintiff**

V.

**INSURANCE COMPANY
Defendant**

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C.A. NO. 5:19-CV-01185

NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Pursuant to 28 U.S.C. §§1332, 1441 and 1446, United of Omaha Life Insurance Company (“United of Omaha”) files this Notice of Removal, and respectfully shows as follows:

I.

Procedural Background

1. United of Omaha is party to an action commenced against it by Plaintiff Lupita Villa in the 166th Judicial District Court of Bexar County, Texas, captioned as Cause No. 2019CI17864; *Lupita Villa v. United of Omaha Life Insurance Company* (the “State Court Action”). True and correct copies of the docket sheet and all process, pleadings and orders in the State Court Action are attached hereto as Exhibit A, along with an index of same.

2. United of Omaha was served with Plaintiff’s Original Petition in the State Court Action (the “State Court Petition”) on September 5, 2019. Thus, this Notice of Removal is timely filed.

II.

Diversity Jurisdiction—Plaintiff is Diverse from Defendant

3. Removal is proper as there is complete diversity between the parties, and the amount in controversy exceeds \$75,000.00. *See* 28 U.S.C. § 1332(a).

4. Plaintiff is now, and was at the time of the filing of the State Court Action, a citizen and resident of Bexar County, Texas. See Petition, ¶ 2.

5. United of Omaha is a Nebraska corporation with its principal place of business in Omaha, Nebraska. See Petition, ¶ 3 (referring to United of Omaha as “a non-resident corporation”). As such, United of Omaha is a citizen of the State of Nebraska and was so at the time of the filing of the State Court Action.

III.

Diversity Jurisdiction—Amount in Controversy Exceeds \$75,000.00

6. The facts alleged in the State Court Petition demonstrate that Plaintiff’s claim exceeds \$75,000.00. The State Court Petition references relief of \$100,000.00. See State Court Petition ¶ 6. More specifically, Plaintiff seeks the benefits of a \$75,000.00 life insurance policy. See State Court Petition ¶ 15. Additionally, she seeks an 18% statutory interest penalty for alleged late payment plus her attorney’s fees. See State Court Petition ¶¶ 30 & 31. Interest and attorney’s fees “must be included in calculating the amount in controversy” for the purpose of diversity jurisdiction. *Manguno v. Prudential Property and Cas. Ins. Co.*, 276 F.3d 720, 723 (5th Cir. 2002); *St. Paul Reinsurance Co. v. Greenberg*, 134 F.3d 1250, 1255 (5th Cir. 1998). Thus, although United of Omaha denies Plaintiff is entitled to such relief, it is apparent from the face of the State Court Petition that her claim exceeds \$75,000.00 for purposes of diversity jurisdiction. Therefore, because Plaintiff’s claim for damages exceeds the minimum jurisdictional amount, this Court may exercise diversity jurisdiction over this case.

7. Therefore, this matter may be properly removed by United of Omaha to the United States District Court for the Western District of Texas, San Antonio Division.

IV.

Removal is Timely.

8. United of Omaha was served with process on September 5, 2019. *See* Docket Sheet and Return of Service, included in Exhibit A. Accordingly, removal is timely as it is being filed within thirty (30) days of the date that United of Omaha was served with process in this matter.

9. All fees required by law in connection with this Notice have been paid by United of Omaha at the time of filing.

V.

Notice Given

10. Notice of this Removal is provided by United of Omaha to Plaintiff and to the 166th Judicial District Court of Bexar County, Texas.

Accordingly, Defendant United of Omaha Life Insurance Company requests that this action be removed to the United States District Court for the Western District of Texas, San Antonio Division, from the 166th Judicial District Court of Bexar County, Texas and for any other relief to which it may be entitled.

Respectfully Submitted,

**WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER, LLP**

By: /s/ Marjorie C. Nicol

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ATTORNEY FOR DEFENDANT

UNITED OF OMAHA LIFE INSURANCE COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was delivered to all parties and counsel of record in accordance with the Texas Rules of Civil Procedure on this the 3rd day of October, 2019.

Brittany Hinojosa
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San Antonio, Texas 78230

/s/ Marjorie C. Nicol

Marjorie C. Nicol